IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.368 OF 1993

1. Shri Bal Jagannath Pandit ..
2. Shri Sidhraj Bal Pandit ..
3. Shri Appa Bal Pandit ..
4. Shri Shriram Bal Pandit ..
All residing at Shri
Bhaumaharaj Niketan, 1653,
Sadashiv Petitioner.

Vs.

1. State of Maharashtra ..

2. The Commissioner
Land Acquisition, Pune ..

3. The Special Land
Acquisition Officer,
No.14, Pune. ..

4. Lokmanya Tilak Smarak Trust
through its trustees viz.

4A. Shri Deepak J.Tilak ..
568, Narayan Peth,
Kelkar Road,
Pune - 30. ..

4B. Shri Sudhakar B.Bapat
2163/B/21, Sadashiv Peth,
Pune - 30. ..

4C. Shri M.P.Velkar
Krishna Tarun Bharat
Chakla, Andheri (East)
Mumbai 400 068 ..

4D. Shri Ramchandra
Shridhar Sathe
720/12, Navi Peth,
Mohan Apartment, Shastri Road,
Behin Petrol Pump, Pune - 30 ..

4E. Shri S.P.Gokhale
Kamalshri,
30, Parijat Society,
Bibwewadi,
Pune - 37. ..

4F. Shri Neelkanthrao Kalyani
Kalyaninagar,
Pune - 14. ..

4G. Shri Narendra Tidke
Aradhna Apartment
C - Wing, G, Ambedkar Road,
Naigav,
Mumbai - 1 .. Respondents.

Ms.Kiran Bhagalia for the petitioner.
Mr.V.S.Gokhale AGP for respondent nos.1, 2 and 3.
Mr.K.G.Munshi i/b Mr.S.G.Karandikar for respondent no.4.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.
DATED : APRIL 7, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE, J.)

. This petition filed under Article 226 of the Constitution has assailed the notification dated 11th May, 1992 issued under section 4 of the Land Acquisition Act, 1894 in respect of two plots of land i.e. area admeasuring 870 sq.mtrs. from City Survey No.1652(part) and another area admeasuring 1349.10 sq. mtrs. from City Survey No.1653 (part) of Sadashiv Peth area of the Pune Municipal Corporation.

2. The petitioners' claim to be successors of Shri Jagannath Maharaj Pandit, the original owner of the subject property and he had in the year 1920 donated part of the property i.e. Bangala Baug to Lokmanya Smarak Trust on the demise of Shri

Lokmanya Tilak so as to construct a memoir in his name and to carry out activities to promote the swarajya movement on the aims and principles so strongly held and promoted by Shri Lokmanya. It is stated that Late Shri Jagannath Maharaj Pandit agreed to donate the land to a private trust found by him and for which he had appointed Shri N.C.Kelkar and Shivram Mahadeo Paranjpe as co-trustee with further request that if the property was not used or required for any of the activities conducive for furthering the aims of late Shri Lokmanya then the property would revert back to Shri Jagannath Maharaj Pandit and/or his LRs. The Trust could only construct some structure in which 'Tilak Vidyalaya' was housed and by a release deed dated 2.8.1993 the trustees released certain properties in favour of Jagannath Maharaj Pandit and retained some portion of the property. The new trust was formed by the name Lokmanya Tilak Smarak Trust, in June 1923 which showed willingness to construct Tilak Smarak and the Tilak Smarak committee gifted portion of the property on 3.9.1927 from Bangala Baug to the new trust. Today's 'Tilak Smarak' was constructed in the said property. As per the petitioners - Tilak Smarak trust was registered on 7.6.1923 with aims and purposes listed as under:

(1) To observe and perform anniversary of Lokmanya Tilak every year on 1st August.

(2) Publish books of various subjects and to provide for an education to social welfare in order to make them more efficient.

3. The petitioners have pointed out large number of properties held by respondent no.4 in addition to the property on which Tilak Smarak is standing as at present. Shri Jayantrao Tilak, the grand son of Lokmanya and also the trustees of Kesari Maratha Sanstha decided to demolish the old Tilak Smarak building and constructed Tilak Smarak Mandir sometime in 1972-73. As per the petitioners, Late Shri Jayantrao Tilak had initially objected to the petitioners' plan submitted to the Pune Municipal Corporation for undertaking construction in the subject land but subsequently he submitted a letter dated 17th November, 1973 to the Divisional Commissioner, Pune stating that he had no objection stating that Tilak Smarak trust has no objection to grant permission of constructionn in C.T.S. Nos.1652 and 1653 owned by the petitioners. However, Pune Vidyarthi Griha

had approached the Government of Maharashtra for acquisition of the part of land in CTS No.1652, 1653 and 1654 and notification under section 4 of the Act came to be issued on 9.4.1975 for acquiring the petitioners' land for the same institution for education purposes. However, the Pune Vidyarthi Griha could not raise the finance and it absolved to withdraw the acquisition proceedings. Consequently, the proposal was dropped.

4. The acquisition officer issued another notification under section 4(1) on 3.7.1975 for acquiring land admeasuring 1590 sq. mtrs. from CTS No.1652 and the copy of the said notification was served on the petitioners. But by the subsequent order dated 7.11.1978 the said acquisition of the respective plots for the sole purpose (to promote the cultural activities of Lokmanya Tilak Smarak trust). On receiving a copy of the impugned notification the petitioners submitted their objections but no steps were taken by the Land Acquisition Officers or the Divisional Commissioner and, therefore, the petitioners approached this Court challenging the acquisition. While granting Rule, the impugned notifications came to stayed as per the order dated 17.2.1993 and consequently declaration under section 6 could not

be published.

5. When the petition came up for final hearing on 9.12.2003 it was noticed that none of the respondents had filed reply and, therefore, this Court by accepting the contentions of the petitioners' allowed the petition and made rule absolute in terms of prayer clause (AA). Civil application no.133 of 2004 was filed for review of the order dated 9.12.2003 and the same was allowed in terms of prayer clauses (a) and (b) excluding the bracketed portion of prayer clause (b) as per the order dated 16.12.2004 and thus the petition came to be restored. Even thereafter none of the respondents or added respondents have chosen to file reply oppossing this petition.

6. Respondent Nos.1 to 3 have not placed before us any record which prima facie shows that the acquisition impugned was or is for the public purpose as defined under section 3(f) of the Land Acquisition Act. There is no explanation as to how the impugned notification was issued when similar proposal was dropped by the order dated 7.11.1978. It is also not known whether the Government had sanctioned any scheme or sponsored any scheme for carrying out the educational activities proposed by

respondent no.4 - trust so as to acquire the subject land. The petitioners have clearly stated that respondent no.4 - trust is not a public trust registered under the Bombay Public Trust Act, 1950 and as per the petitioners it is only a private trust. There is no reply filed by respondent no.4 or the added respondents. The reason given for acquisition of the subject land and in the impugned notifications is for promotion of cultural activities in public interest by respondent no.4. The term cultural activities is very broad and it could not be read by us to give the meaning as envisaged under section 3(f) of the Act and in the absence of any replies filed by the respondents and, therefore, we have to hold that the impugned notifications have been issued without there being any public purpose to acquire the subject plots of land.

7. In the premises the petition succeeds and the same is hereby allowed by making the Rule absolute in terms of prayer clause (A) and (AA). The parties to bear their own costs.

(D.B.BHOSALE, J.) (B.H.MARLAPALLE, J.)